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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EMTEK (SHENZHEN) CO., LTD., a foreign
limited liability company,

Plaintiff/Counter-Defendant,

vs.

WAIAN LLC, OWEN S. WONG, and EMTEK
INTERNATIONAL LLC,

Defendants/Counter-Claimants.

CASE NO. 2:19-cv-00927-GMN-EJY

STIPULATION AND ORDER TO STAY DISCOVERY

Pursuant to Local Rule 26-3 and all applicable authority, and by and through their respective counsel of record, Defendants/Counter-Claimants WAIAN LLC, OWEN S. WONG, and EMTEK INTERNATIONAL LLC (“Defendants” or “Counter-Claimants”) and Plaintiff/Counter-Defendant EMTEK (SHENZHEN) CO., LTD. (“Plaintiff” or “Counter-Defendant”) hereby submit to the Court this *Stipulation and Order to Stay Discovery*. The primary reasons for this Stipulation are as follows: (1) the COVID-19 pandemic has resulted in numerous restrictions (and some outright bans) on international travel and the obtaining of evidence; (2) China does not permit attorneys to take depositions in China for use in non-Chinese courts; and (3) since Defendants substituted new counsel on February 26, 2021, the

1 Parties have in good faith focused on settlement negotiations. There are additional reasons as
2 well. In connection with this Stipulation, the Parties hereby stipulate and agree as follows:

3 **I. INFORMATION PURSUANT TO LOCAL RULE 26-3**

4 **A. Discovery completed.**

5 On December 17, 2019, Plaintiff made its Initial Disclosures.

6 On February 4, 2020, Defendants made their Initial Disclosures.

7 On March 31, 2020, Plaintiff/Counter-Defendant produced its First Supplement to
8 Plaintiff's Rule 26(a)(1)(A) Disclosures.

9 On April 30, 2020, Plaintiff/Counter-Defendant produced its Second Supplement to
10 Plaintiff's Rule 26(a)(1)(A) Disclosures.

11 On May 7, 2020, Plaintiff/Counter-Defendant propounded Plaintiff/Counter-Defendant's
12 First Set of Requests for Admission to Defendant/Counterclaimants.

13 On May 7, 2020, Plaintiff/Counter-Defendant propounded Plaintiff/Counter-Defendant's
14 First Set of Requests for Production to Defendant/Counterclaimants.

15 On May 7, 2020, Plaintiff/Counter-Defendant propounded Plaintiff/Counter-Defendant's
16 First Set of Interrogatories to Defendant/Counterclaimant Owen S. Wong.

17 On May 15, 2020, Plaintiff Counter-Defendant served Notice of Intent to Serve Subpoena
18 Duces Tecum on three separate deponents, including: (1) Custodian of Records for JPMorgan
19 Chase, Bank, N.A.; (2) Custodian of Records for Wells Fargo Bank, N.A., (3) Custodian of
20 Records for Citibank, N.A. These subpoenas were subsequently served on the respective
21 deponents and, after delays due to branch closures and other COVID-19 related service delays,
22 as of the date of this stipulation, Plaintiff Counter-Defendant has begun receiving the requested
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1 records and anticipates a forthcoming supplemental production of documents from the
2 deponents.

3 On June 19, 2020, Plaintiff Counter-Defendant produced its Third Supplement to
4 Plaintiff's Rule 26(a)(1)(A) Disclosures.

5 On July 12, 2020, Defendants produced their Second Supplement to Defendants' Rule
6 26(a)(1)(A) Disclosures.

7 On July 23, 2020, Plaintiff Counter-Defendant produced its Fourth Supplement to
8 Plaintiff's Rule 26(a)(1)(A) Disclosures.

9 On July 29, 2020, Defendants produced their Response to Plaintiff/Counter-Defendant's
10 First Set of Requests for Admissions.

11 On August 24, 2020, Defendants produced their Third Supplement to Defendants' Rule
12 26(a)(1)(A) Disclosures.

13 On September 6, 2020, Defendants produced their Fourth Supplement to Defendants'
14 Rule 26(a)(1)(A) Disclosures.

15 On September 8, 2020, Defendants produced their Response to Plaintiff/Counter-
16 Defendant's First Set of Requests for Production.

17 On September 8, 2020, Defendants produced their Response to Plaintiff/Counter-
18 Defendant's First Set of Interrogatories.

19 On October 5, 2020, Plaintiff received a supplemental document production of bank
20 records from Citibank, N.A.

21 On November 18, 2020, Defendants produced their Fifth Supplement to Defendants'
22 Rule 26(a)(1)(A) Disclosures.

23 On February 26, 2021, Defendants substituted new counsel in this matter.
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1 On March 8, 2021, Defendants served their demand for prior discovery.

2 **B. Discovery that remains to be completed.**

3 In the event the case is not resolved during the current settlement negotiations, the Parties
4 will need to depose several witnesses, several of whom are based in China, which has continued
5 to restrict travel due to the Covid-19 pandemic. Defendants/Counter-Claimants counsel will
6 want to take a FRCP 30(b)(6) deposition of a representative of Plaintiff/Counter-Defendant. The
7 Parties may also need to conduct expert discovery, including the use of accounting experts in the
8 event the Parties are unable to agree on the amounts in dispute.
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10 **C. Why discovery was not completed.**

11 Discovery has not been completed primarily for three reasons. First, the global COVID-
12 19 pandemic has resulted in numerous restrictions (and some outright bans) on international
13 travel and the obtaining of evidence, particularly as to depositions of the remaining party
14 representatives. Plaintiff/Counter-Defendant's headquarters, along with its representatives and
15 witnesses, is located in Wuhan City, Hubei Province, in the People's Republic of China ("PRC"
16 or "China"). In fact, Plaintiff/Counter-Defendant's headquarters, representatives, and witnesses
17 are located in the very city where the COVID-19 outbreak began. Much discovery is needed
18 from other individuals and entities in China. Because of the worldwide pandemic, China has
19 only recently begun to open international travel and business and other operations. Even so,
20 restrictions remain and travel visas have to be obtained. For these reasons, the Parties have not
21 yet had a chance to conduct meaningful discovery there.
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1 Second, in addition to the issues arising from the pandemic, “China does not permit
2 attorneys to take depositions in China for use in [non-Chinese] courts.”¹ This is generally true
3 even if the depositions are taken voluntarily, remotely, or both. This restriction means that
4 Plaintiff’s representatives will not be able to be deposed while they are inside China or they
5 could be prosecuted by Chinese authorities. They would have to travel outside of China for the
6 depositions, which travel is not without its own restrictions and limitations due to the pandemic.
7 Plaintiff’s representatives will also have to obtain travel visas, which have additional restrictions.
8 Many U.S. consulates in China are currently closed and are not issuing any visas at all. The U.S.
9 embassy in Beijing is only allowing visas on an emergency basis. Requests to the Central
10 Authority under the Hague Evidence Convention for holding depositions while the Plaintiff and
11 its representatives are inside China has not been achieved by either parties’ counsel, and the
12 Parties anticipate that significant delays may be encountered until permission is obtained from
13 the Chinese Central Authority and/or the current COVID international travel restrictions between
14 the United States and China are lifted.

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18 Finally, since Defendants substituted new counsel on February 26, 2021, the Parties have
19 in good faith focused on settlement negotiations, which are ongoing. They have made
20 considerable progress, but some issues remain. Settlement issues are more complex in this case
21 because the parties must account for the dissolution of the underlying business entity and its
22 assets. In order to keep the Parties’ attorney fees and court costs down, they have tried to avoid
23 discovery matters as these negotiations have proceeded over the past few months.

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28 ¹ <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html> (last visited April 19, 2021).

D. Proposed schedule for completing all remaining discovery.

The parties propose a temporary stay of discovery, as follows:

<u>Description of Deadline</u>	<u>Old Date</u>	<u>New Date</u>
Initial Disclosures	<i>Passed</i>	<i>STAYED</i>
Amending Pleadings/Adding Parties	<i>Passed</i>	<i>STAYED</i>
Interim Status Report	<i>Passed</i>	<i>STAYED</i>
Regular Discovery Cut-Off	5/4/2021	<i>STAYED</i>
Initial Expert Disclosures	5/18/2021	<i>STAYED</i>
Rebuttal Expert Disclosures	6/16/2021	<i>STAYED</i>
Expert Discovery Cut-Off	7/14/2021	<i>STAYED</i>
Dispositive Motions	8/11/2021	<i>STAYED</i>
Joint Pre-Trial Order	9/8/2021	<i>STAYED</i>

The parties would also request a status conference in this matter to be set ninety (90) days out or on a date that the Court deems reasonable for allowing sufficient time for meaningful settlement discussions.

II. GOOD CAUSE.

As discussed in Part I.C above, the Parties would submit that there is good cause for why discovery has not been completed and why discovery should be temporarily stayed at this juncture: (1) the COVID-19 pandemic has resulted in numerous restrictions (and some outright bans) on international travel and the obtaining of evidence; (2) China does *not* permit attorneys to take depositions in China for use in non-Chinese courts; and (3) since Defendants substituted new counsel on February 26, 2021, the Parties have in good faith focused on settlement negotiations. Additional reasons for good cause are as follows: (4) the Parties have been duly

1 diligent, and they have not been dilatory or clogging the Court's docket; (5) a temporary stay of
2 discovery would not prejudice Plaintiff or Defendants, because all Parties have agreed to the stay;
3 (6) the stay would not disrupt the Court's proceedings in this matter because no hearings or trial
4 dates are currently scheduled; (6) a temporary stay of discovery would allow the Parties to
5 continue to engage in meaningful settlement negotiations without having to shift their focus, or
6 bear the time and expense, for additional discovery at this time, which discovery would be
7 rendered unnecessary in the first place if the Parties settle; and (7) given that there remain
8 restrictions on international travel and the obtaining of evidence, a stay would allow for a
9 temporary pause until conditions return somewhat more to "normal," which might allow the
10 Parties to proceed with relatively uninhibited discovery, if they are not able to settle.
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12 **III. EXCUSABLE NEGLECT.**

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14 To the extent the Parties must show excusable neglect in submitting this stipulation at this
15 time, they would state that because of the ongoing settlement dialogue between the Parties, they
16 were hopeful that this case could be settled by April 16, 2021. Nevertheless, certain issues have
17 recently arisen that will require additional time and attention, and given the international and
18 language barriers, the Parties foresee that a good deal of time will be needed to reach a final
19 resolution. For these reasons, the Parties have only just come to realize that discovery would
20 need to be stayed (or extended). For this reason, they are submitting this stipulation now.
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22 **IV. REQUEST TO EXTEND OTHER DEADLINES.**

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24 None at this time.

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1 **V. CONCLUSION.**

2 Wherefore, Defendants/Counter-Claimants WAIAN LLC, OWEN S. WONG, and
3 EMTEK ("Defendants" or "Counter-Claimants") and Plaintiff/Counter-Defendant EMTEK
4 (SHENZHEN) CO., LTD. ("Plaintiff" or "Counter-Defendant") hereby request the Court to enter
5 the foregoing stipulation as an order of the Court and to stay discovery.
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7 IT IS SO STIPULATED.

8 Dated: April 21, 2021

Dated: April 21, 2021

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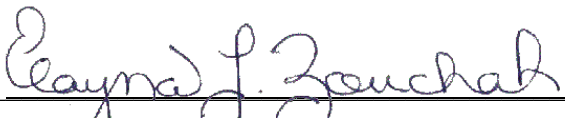
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16 **ORDER**

17 Having reviewed the foregoing Stipulation of the Parties, and finding good, just,
18 and sufficient cause therefor, it is hereby entered as an Order of the Court.

19 IT IS THEREFORE ORDERED AS FOLLOWS:

- 20 1. Discovery in this matter is hereby STAYED.
- 21 2. A telephonic status conference in this action is hereby scheduled for **July 22,**
22 **2021 at 10:00 a.m.** All Parties are instructed to call the Audio Conference Line at **(888)**
23 **251-2909, access code 7771745**, five (5) minutes prior to the hearing time. Please remain on
24 the line until such time as the Court joins the call and convenes the proceedings. The use of a
25 cell phone or speaker phone during the call is prohibited. The call must be made using a land
26 line.

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28 DATED: April 22, 2021


UNITED STATES MAGISTRATE JUDGE
CASE NO.: 2:19-cv-00927-GMN-EJY